

AMENDED IN SENATE APRIL 24, 2000

AMENDED IN SENATE MARCH 27, 2000

SENATE BILL

No. 1955

Introduced by Committee on Public Safety (Senators Vasconcellos (Chair), Burton, Johnston, McPherson, Polanco, and Rainey)

February 24, 2000

An act to amend Sections ~~1170.17 and 1538.5~~ 832.6 and 1170.17 of the Penal Code, and to amend Section 23612 of the Vehicle Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1955, as amended, Committee on Public Safety. Public safety.

(1) *Existing law deems satisfied the training requirements of a reserve officer who has previously satisfied the training requirements of the Commission on Peace Officer Standards and Training and has been serving as a level I or II reserve office in a law enforcement agency, even if that reserve officer accepts a new appointment at the same level in another law enforcement agency.*

This bill would require a reserve officer to satisfy current training requirements if there has been more than a 3 year break in service. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Existing law authorizes the prosecution and punishment of a person under the age of 18 years as an adult for a criminal offense under specified circumstances upon a

finding that the person is not a fit and proper subject to be dealt with under the juvenile court law. Existing statutory language provides that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the person is a fit and proper subject to be dealt with under the juvenile court law based upon 5 specified circumstances.

This bill would amend that provision to correct that statutory language by providing that, except as otherwise provided, a person prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the person is not a fit and proper subject to be dealt with under the juvenile court law as specified.

~~(2) Existing law provides a pretrial procedure for suppressing evidence on the grounds that it was obtained as a result of an illegal search or seizure.~~

~~This bill would provide that neither the investigating officer nor the investigator of the defendant shall be excluded from the hearing on the motion to suppress evidence.~~

(3) Existing law specifies that a person who drives a motor vehicle is deemed to have given his or her consent to a chemical test of his or her blood or breath for the purpose of determining the alcoholic content of the blood if lawfully arrested for violating a specified provision of law.

This bill would correct a cross-reference in this provision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 832.6 of the Penal Code is*
2 *amended to read:*

3 832.6. (a) Every person deputized or appointed, as
4 described in subdivision (a) of Section 830.6, shall have
5 the powers of a peace officer only when the person is any
6 of the following:

7 (1) A level I reserve officer deputized or appointed
8 pursuant to paragraph (1) or (2) of subdivision (a) or

1 subdivision (b) of Section 830.6 and assigned to the
2 prevention and detection of crime and the general
3 enforcement of the laws of this state, whether or not
4 working alone, and the person has completed the basic
5 training course for deputy sheriffs and police officers
6 prescribed by the Commission on Peace Officer
7 Standards and Training. For level I reserve officers
8 appointed prior to January 1, 1997, the basic training
9 requirement shall be the course that was prescribed at
10 the time of their appointment. Reserve officers
11 appointed pursuant to this paragraph shall satisfy the
12 continuing professional training requirement prescribed
13 by the commission.

14 (2) A level II reserve officer assigned to the
15 prevention and detection of crime and the general
16 enforcement of the laws of this state while under the
17 immediate supervision of a peace officer who has
18 completed the basic training course for deputy sheriffs
19 and police officers prescribed by the Commission on
20 Peace Officer Standards and Training, and the level II
21 reserve officer has completed the course required by
22 Section 832 and any other training prescribed by the
23 commission.

24 Level II reserve officers appointed pursuant to this
25 paragraph may be assigned, without immediate
26 supervision, to those limited duties that are authorized for
27 level III reserve officers pursuant to paragraph (3).
28 Reserve officers appointed pursuant to this paragraph
29 shall satisfy the continuing professional training
30 requirement prescribed by the commission.

31 (3) Level III reserve officers may be deployed and are
32 authorized only to carry out limited support duties not
33 requiring general law enforcement powers in their
34 routine performance. Those limited duties shall include
35 traffic control, security at parades and sporting events,
36 report taking, evidence transportation, parking
37 enforcement, and other duties that are not likely to result
38 in physical arrests. Level III reserve officers while
39 assigned these duties shall be supervised in the accessible
40 vicinity by a level I reserve officer or a full-time, regular

1 peace officer employed by a law enforcement agency
2 authorized to have reserve officers. Level III reserve
3 officers may transport prisoners without immediate
4 supervision. Those persons shall have completed the
5 training required under Section 832 and any other
6 training prescribed by the commission for those persons.

7 (4) A person assigned to the prevention and detection
8 of a particular crime or crimes or to the detection or
9 apprehension of a particular individual or individuals
10 while working under the supervision of a California peace
11 officer in a county adjacent to the state border who
12 possesses a basic certificate issued by the Commission on
13 Peace Officer Standards and Training, and the person is
14 a law enforcement officer who is regularly employed by
15 a local or state law enforcement agency in an adjoining
16 state and has completed the basic training required for
17 peace officers in his or her state.

18 (5) For purposes of this section, a reserve officer who
19 has previously satisfied any training requirement
20 pursuant to this section and has been serving as a level I
21 or II reserve officer in one law enforcement agency shall
22 be deemed to remain qualified~~as to~~ *for appointment*
23 *regarding the requirements of the Commission on Peace*
24 *Officer Standards and Training—requirements* even
25 though that reserve officer accepts a new appointment at
26 the same level in another law enforcement agency. *If the*
27 *reserve officer has more than a three year break in*
28 *service, he or she shall satisfy current training*
29 *requirements.*

30 This training shall fully satisfy any other training
31 requirements required by law, including those specified
32 in Section 832.

33 In no case shall a peace officer of an adjoining state
34 provide services within a California jurisdiction during
35 any period in which the regular law enforcement agency
36 of the jurisdiction is involved in a labor dispute.

37 (b) Notwithstanding subdivision (a), a person who is
38 issued a level I reserve officer certificate before January
39 1, 1981, shall have the full powers and duties of a peace
40 officer as provided by Section 830.1 if so designated by

1 local ordinance or, if the local agency is not authorized to
2 act by ordinance, by resolution, either individually or by
3 class, if the appointing authority determines the person
4 is qualified to perform general law enforcement duties by
5 reason of the person's training and experience. Persons
6 who were qualified to be issued the level I reserve officer
7 certificate before January 1, 1981, and who state in writing
8 under penalty of perjury that they applied for but were
9 not issued the certificate before January 1, 1981, may be
10 issued the certificate before July 1, 1984. For purposes of
11 this section, certificates so issued shall be deemed to have
12 the full force and effect of any level I reserve officer
13 certificate issued prior to January 1, 1981.

14 (c) In carrying out this section, the commission:

15 (1) May use proficiency testing to satisfy reserve
16 training standards.

17 (2) Shall provide for convenient training to remote
18 areas in the state.

19 (3) Shall establish a professional certificate for reserve
20 officers as defined in paragraph (1) of subdivision (a) and
21 may establish a professional certificate for reserve officers
22 as defined in paragraphs (2) and (3) of subdivision (a).

23 (4) Shall facilitate the voluntary transition of reserve
24 officers to regular officers with no unnecessary
25 redundancy between the training required for level I and
26 level II reserve officers.

27 (5) Shall develop a supplemental course for existing
28 level I reserve officers desiring to satisfy the basic training
29 course for deputy sheriffs and police officers.

30 (d) In carrying out paragraphs (1) and (3) of
31 subdivision (c), the commission may establish and levy
32 appropriate fees, provided the fees do not exceed the cost
33 for administering the respective services. These fees shall
34 be deposited in the Peace Officers' Training Fund
35 established by Section 13520.

36 (e) The commission shall include an amount in its
37 annual budget request to carry out this section.

38 SEC. 2. Section 1170.17 of the Penal Code is amended
39 to read:

1 1170.17. (a) When a person is prosecuted for a
2 criminal offense committed while he or she was under the
3 age of 18 years and the prosecution is lawfully initiated in
4 a court of criminal jurisdiction without a prior finding that
5 the person is not a fit and proper subject to be dealt with
6 under the juvenile court law, upon subsequent conviction
7 for any criminal offense, the person shall be subject to the
8 same sentence as an adult convicted of the identical
9 offense, in accordance with the provisions set forth in
10 subdivision (a) of Section 1170.19, except under the
11 circumstances described in subdivision (b) or (c).

12 (b) Where the conviction is for the type of offense
13 which, in combination with the person's age at the time
14 the offense was committed, makes the person eligible for
15 transfer to a court of criminal jurisdiction, pursuant to a
16 rebuttable presumption that the person is not a fit and
17 proper subject to be dealt with under the juvenile court
18 law, and the prosecution for the offense could not lawfully
19 be initiated in a court of criminal jurisdiction, then either
20 of the following shall apply:

21 (1) The person shall be subject to the same sentence
22 as an adult convicted of the identical offense in
23 accordance with the provisions set forth in subdivision
24 (a) of Section 1170.19, unless the person prevails upon a
25 motion brought pursuant to paragraph (2).

26 (2) Upon a motion brought by the person, the court
27 shall order the probation department to prepare a
28 written social study and recommendation concerning the
29 person's fitness to be dealt with under the juvenile court
30 law and the court shall either conduct a fitness hearing or
31 suspend proceedings and remand the matter to the
32 juvenile court to prepare a social study and make a
33 determination of fitness. The person shall receive a
34 disposition under the juvenile court law only if the person
35 demonstrates, by a preponderance of the evidence, that
36 he or she is a fit and proper subject to be dealt with under
37 the juvenile court law, based upon each of the following
38 five criteria:

39 (A) The degree of criminal sophistication exhibited by
40 the person.

1 (B) Whether the person can be rehabilitated prior to
2 the expiration of the juvenile court's jurisdiction.

3 (C) The person's previous delinquent history.

4 (D) Success of previous attempts by the juvenile court
5 to rehabilitate the person.

6 (E) The circumstances and gravity of the offense for
7 which the person has been convicted.

8 If the court conducting the fitness hearing finds that
9 the person is not a fit and proper subject for juvenile court
10 jurisdiction, then the person shall be sentenced by the
11 court where he or she was convicted, in accordance with
12 the provisions of paragraph (1). If the court conducting
13 the hearing on fitness finds that the person is a fit and
14 proper subject for juvenile court jurisdiction, then the
15 person shall be subject to a disposition in accordance with
16 the provisions of subdivision (b) of Section 1170.19.

17 (c) Where the conviction is for the type of offense
18 which, in combination with the person's age at the time
19 the offense was committed, makes the person eligible for
20 transfer to a court of criminal jurisdiction, pursuant to a
21 rebuttable presumption that the person is a fit and proper
22 subject to be dealt with under the juvenile court law, then
23 the person shall be sentenced as follows:

24 (1) The person shall be subject to a disposition under
25 the juvenile court law, in accordance with the provisions
26 of subdivision (b) of Section 1170.19, unless the district
27 attorney prevails upon a motion, as described in
28 paragraph (2).

29 (2) Upon a motion brought by the district attorney,
30 the court shall order the probation department to
31 prepare a written social study and recommendation
32 concerning whether the person is a fit and proper subject
33 to be dealt with under the juvenile court law. The court
34 shall either conduct a fitness hearing or suspend
35 proceedings and remand the matter to the juvenile court
36 for a determination of fitness. The person shall be subject
37 to a juvenile disposition under the juvenile court law
38 unless the district attorney demonstrates, by a
39 preponderance of the evidence, that the person is not a
40 fit and proper subject to be dealt with under the juvenile

1 court law, based upon the five criteria set forth in
2 paragraph (2) of subdivision (b). If the person is found to
3 be not a fit and proper subject to be dealt with under the
4 juvenile court law, then the person shall be sentenced in
5 the court where he or she was convicted, in accordance
6 with the provisions set forth in subdivision (a) of Section
7 1170.19. If the person is found to be a fit and proper
8 subject to be dealt with under the juvenile court law, the
9 person shall be subject to a disposition, in accordance with
10 the provisions of subdivision (b) of Section 1170.19.

11 (d) Where the conviction is for the type of offense
12 which, in combination with the person's age, does not
13 make the person eligible for transfer to a court of criminal
14 jurisdiction, the person shall be subject to a disposition in
15 accordance with the provisions of subdivision (b) of
16 Section 1170.19.

17 ~~SEC. 2. Section 1538.5 of the Penal Code is amended~~
18 ~~to read:~~

19 ~~1538.5. (a) (1) A defendant may move for the return~~
20 ~~of property or to suppress as evidence any tangible or~~
21 ~~intangible thing obtained as a result of a search or seizure~~
22 ~~on either of the following grounds:~~

23 ~~(A) The search or seizure without a warrant was~~
24 ~~unreasonable.~~

25 ~~(B) The search or seizure with a warrant was~~
26 ~~unreasonable because any of the following apply:~~

27 ~~(i) The warrant is insufficient on its face.~~

28 ~~(ii) The property or evidence obtained is not that~~
29 ~~described in the warrant.~~

30 ~~(iii) There was not probable cause for the issuance of~~
31 ~~the warrant.~~

32 ~~(iv) The method of execution of the warrant violated~~
33 ~~federal or state constitutional standards.~~

34 ~~(v) There was any other violation of federal or state~~
35 ~~constitutional standards.~~

36 ~~(2) A motion pursuant to paragraph (1) shall be made~~
37 ~~in writing and accompanied by a memorandum of points~~
38 ~~and authorities and proof of service. The memorandum~~
39 ~~shall list the specific items of property or evidence sought~~
40 ~~to be returned or suppressed and shall set forth the factual~~

1 ~~basis and the legal authorities that demonstrate why the~~
2 ~~motion should be granted.~~

3 ~~(b) When consistent with the procedures set forth in~~
4 ~~this section and subject to the provisions of Section 170 to~~
5 ~~170.6, inclusive, of the Code of Civil Procedure, the~~
6 ~~motion should first be heard by the magistrate who issued~~
7 ~~the search warrant if there is a warrant.~~

8 ~~(c) Whenever a search or seizure motion is made in~~
9 ~~the municipal or superior court as provided in this~~
10 ~~section, the judge or magistrate shall receive evidence on~~
11 ~~any issue of fact necessary to determine the motion.~~

12 ~~(d) If a search or seizure motion is granted pursuant~~
13 ~~to the proceedings authorized by this section, the~~
14 ~~property or evidence shall not be admissible against the~~
15 ~~movant at any trial or other hearing unless further~~
16 ~~proceedings authorized by this section, Section 871.5,~~
17 ~~1238, or 1466 are utilized by the people.~~

18 ~~(e) If a search or seizure motion is granted at a trial,~~
19 ~~the property shall be returned upon order of the court~~
20 ~~unless it is otherwise subject to lawful detention. If the~~
21 ~~motion is granted at a special hearing, the property shall~~
22 ~~be returned upon order of the court only if, after the~~
23 ~~conclusion of any further proceedings authorized by this~~
24 ~~section, Section 1238 or 1466, the property is not subject~~
25 ~~to lawful detention or if the time for initiating the~~
26 ~~proceedings has expired, whichever occurs last. If the~~
27 ~~motion is granted at a preliminary hearing, the property~~
28 ~~shall be returned upon order of court after 10 days unless~~
29 ~~the property is otherwise subject to lawful detention or~~
30 ~~unless, within that time, further proceedings authorized~~
31 ~~by this section, Section 871.5 or 1238 are utilized; if they~~
32 ~~are utilized, the property shall be returned only if, after~~
33 ~~the conclusion of the proceedings, the property is no~~
34 ~~longer subject to lawful detention.~~

35 ~~(f) (1) If the property or evidence relates to a felony~~
36 ~~offense initiated by a complaint, the motion shall be made~~
37 ~~in the superior court only upon filing of an information,~~
38 ~~except that the defendant may make the motion at the~~
39 ~~preliminary hearing in the municipal court or in the~~
40 ~~superior court in a county in which there is no municipal~~

1 court, but the motion shall be restricted to evidence
2 sought to be introduced by the people at the preliminary
3 hearing.

4 (2) The motion may be made at the preliminary
5 examination only if at least five court days before the date
6 set for the preliminary examination the defendant has
7 filed and personally served on the people a written
8 motion accompanied by a memorandum of points and
9 authorities as required by paragraph (2) of subdivision

10 (a). At the preliminary examination, the magistrate may
11 grant the defendant a continuance for the purpose of
12 filing the motion and serving the motion upon the people,
13 at least five court days before resumption of the
14 examination, upon a showing that the defendant or his or
15 her attorney of record was not aware of the evidence or
16 was not aware of the grounds for suppression before the
17 preliminary examination.

18 (3) Any written response by the people to the motion
19 described in paragraph (2) shall be filed with the court
20 and personally served on the defendant or his or her
21 attorney of record at least two court days prior to the
22 hearing at which the motion is to be made.

23 (g) If the property or evidence relates to a
24 misdemeanor complaint, the motion shall be made in the
25 municipal court or in the superior court in a county in
26 which there is no municipal court before trial and heard
27 prior to trial at a special hearing relating to the validity of
28 the search or seizure. If the property or evidence relates
29 to a misdemeanor filed together with a felony, the
30 procedure provided for a felony in this section and
31 Sections 1238 and 1539 shall be applicable.

32 (h) If, prior to the trial of a felony or misdemeanor,
33 opportunity for this motion did not exist or the defendant
34 was not aware of the grounds for the motion, the
35 defendant shall have the right to make this motion during
36 the course of trial in the municipal or superior court.

37 (i) If the property or evidence obtained relates to a
38 felony offense initiated by complaint and the defendant
39 was held to answer at the preliminary hearing, or if the
40 property or evidence relates to a felony offense initiated

1 by indictment, the defendant shall have the right to
2 renew or make the motion in the superior court at a
3 special hearing relating to the validity of the search or
4 seizure which shall be heard prior to trial and at least 10
5 court days after notice to the people, unless the people
6 are willing to waive a portion of this time. Any written
7 response by the people to the motion shall be filed with
8 the court and personally served on the defendant or his
9 or her attorney of record at least two court days prior to
10 the hearing, unless the defendant is willing to waive a
11 portion of this time. If the offense was initiated by
12 indictment or if the offense was initiated by complaint
13 and no motion was made at the preliminary hearing, the
14 defendant shall have the right to fully litigate the validity
15 of a search or seizure on the basis of the evidence
16 presented at a special hearing. If the motion was made at
17 the preliminary hearing, unless otherwise agreed to by all
18 parties, evidence presented at the special hearing shall be
19 limited to the transcript of the preliminary hearing and
20 to evidence that could not reasonably have been
21 presented at the preliminary hearing, except that the
22 people may recall witnesses who testified at the
23 preliminary hearing. If the people object to the
24 presentation of evidence at the special hearing on the
25 grounds that the evidence could reasonably have been
26 presented at the preliminary hearing, the defendant shall
27 be entitled to an in camera hearing to determine that
28 issue. The superior court shall base its ruling on all
29 evidence presented at the special hearing and on the
30 transcript of the preliminary hearing, and the findings of
31 the magistrate shall be binding on the superior court as
32 to evidence or property not affected by evidence
33 presented at the special hearing. After the special hearing
34 is held in the superior court, any review thereafter
35 desired by the defendant prior to trial shall be by means
36 of an extraordinary writ of mandate or prohibition filed
37 within 30 days after the denial of his or her motion at the
38 special hearing.

39 (j) If the property or evidence relates to a felony
40 offense initiated by complaint and the defendant's

1 motion for the return of the property or suppression of
2 the evidence at the preliminary hearing is granted, and
3 if the defendant is not held to answer at the preliminary
4 hearing, the people may file a new complaint or seek an
5 indictment after the preliminary hearing, and the ruling
6 at the prior hearing shall not be binding in any
7 subsequent proceeding, except as limited by subdivision
8 (p). In the alternative, the people may move to reinstate
9 the complaint, or those parts of the complaint for which
10 the defendant was not held to answer, pursuant to Section
11 871.5. If the property or evidence relates to a felony
12 offense initiated by complaint and the defendant's
13 motion for the return or suppression of the property or
14 evidence at the preliminary hearing is granted, and if the
15 defendant is held to answer at the preliminary hearing,
16 the ruling at the preliminary hearing shall be binding
17 upon the people unless, upon notice to the defendant and
18 the court in which the preliminary hearing was held and
19 upon the filing of an information, the people, within 15
20 days after the preliminary hearing, request in the
21 superior court a special hearing, in which case the validity
22 of the search or seizure shall be relitigated de novo on the
23 basis of the evidence presented at the special hearing, and
24 the defendant shall be entitled, as a matter of right, to a
25 continuance of the special hearing for a period of time up
26 to 30 days. The people may not request relitigation of the
27 motion at a special hearing if the defendant's motion has
28 been granted twice. If the defendant's motion is granted
29 at a special hearing in the superior court, the people, if
30 they have additional evidence relating to the motion and
31 not presented at the special hearing, shall have the right
32 to show good cause at the trial why the evidence was not
33 presented at the special hearing and why the prior ruling
34 at the special hearing should not be binding, or the people
35 may seek appellate review as provided in subdivision (o),
36 unless the court, prior to the time the review is sought, has
37 dismissed the case pursuant to Section 1385. If the case has
38 been dismissed pursuant to Section 1385, or if the people
39 dismiss the case on their own motion after the special
40 hearing, the people may file a new complaint or seek an

1 indictment after the special hearing, and the ruling at the
2 special hearing shall not be binding in any subsequent
3 proceeding, except as limited by subdivision (p). If the
4 property or evidence seized relates solely to a
5 misdemeanor complaint, and the defendant made a
6 motion for the return of property or the suppression of
7 evidence in the municipal court or superior court in a
8 county in which there is no municipal court prior to trial,
9 both the people and defendant shall have the right to
10 appeal any decision of that court relating to that motion
11 to the superior court of the county in which the municipal
12 or superior court is located, in accordance with the
13 California Rules of Court provisions governing appeals to
14 the appellate division in criminal cases. If the people
15 prosecute review by appeal or writ to decision, or any
16 review thereof, in a felony or misdemeanor case, it shall
17 be binding upon them.

18 (k) If the defendant's motion to return property or
19 suppress evidence is granted and the case is dismissed
20 pursuant to Section 1385, or the people appeal in a
21 misdemeanor case pursuant to subdivision (j), the
22 defendant shall be released pursuant to Section 1318 if he
23 or she is in custody and not returned to custody unless the
24 proceedings are resumed in the trial court and he or she
25 is lawfully ordered by the court to be returned to custody.

26 If the defendant's motion to return property or
27 suppress evidence is granted and the people file a petition
28 for writ of mandate or prohibition pursuant to subdivision
29 (o) or a notice of intention to file such a petition, the
30 defendant shall be released pursuant to Section 1318,
31 unless (1) he or she is charged with a capital offense in a
32 case where the proof is evident and the presumption
33 great, or (2) he or she is charged with a noncapital offense
34 defined in Chapter 1 (commencing with Section 187) of
35 Title 8 of Part 1, and the court orders that the defendant
36 be discharged from actual custody upon bail.

37 (l) If the defendant's motion to return property or
38 suppress evidence is granted, the trial of a criminal case
39 shall be stayed to a specified date pending the
40 termination in the appellate courts of this state of the

1 ~~proceedings provided for in this section, Section 871.5,~~
2 ~~1238, or 1466 and, except upon stipulation of the parties,~~
3 ~~pending the time for the initiation of these proceedings.~~
4 ~~Upon the termination of these proceedings, the~~
5 ~~defendant shall be brought to trial as provided by Section~~
6 ~~1382, and, subject to the provisions of Section 1382,~~
7 ~~whenever the people have sought and been denied~~
8 ~~appellate review pursuant to subdivision (c), the~~
9 ~~defendant shall be entitled to have the action dismissed~~
10 ~~if he or she is not brought to trial within 30 days of the date~~
11 ~~of the order that is the last denial of the petition. Nothing~~
12 ~~contained in this subdivision shall prohibit a court, at the~~
13 ~~same time as it rules upon the search and seizure motion,~~
14 ~~from dismissing a case pursuant to Section 1385 when the~~
15 ~~dismissal is upon the court's own motion and is based~~
16 ~~upon an order at the special hearing granting the~~
17 ~~defendant's motion to return property or suppress~~
18 ~~evidence. In a misdemeanor case, the defendant shall be~~
19 ~~entitled to a continuance of up to 30 days if he or she~~
20 ~~intends to file a motion to return property or suppress~~
21 ~~evidence and needs this time to prepare for the special~~
22 ~~hearing on the motion. In case of an appeal by the~~
23 ~~defendant in a misdemeanor case from the denial of the~~
24 ~~motion, he or she shall be entitled to bail as a matter of~~
25 ~~right, and, in the discretion of the trial or appellate court,~~
26 ~~may be released on his or her own recognizance pursuant~~
27 ~~to Section 1318.~~

28 ~~(m) The proceedings provided for in this section, and~~
29 ~~Sections 871.5, 995, 1238, and 1466 shall constitute the sole~~
30 ~~and exclusive remedies prior to conviction to test the~~
31 ~~unreasonableness of a search or seizure where the person~~
32 ~~making the motion for the return of property or the~~
33 ~~suppression of evidence is a defendant in a criminal case~~
34 ~~and the property or thing has been offered or will be~~
35 ~~offered as evidence against him or her. A defendant may~~
36 ~~seek further review of the validity of a search or seizure~~
37 ~~on appeal from a conviction in a criminal case~~
38 ~~notwithstanding the fact that the judgment of conviction~~
39 ~~is predicated upon a plea of guilty. Review on appeal may~~
40 ~~be obtained by the defendant provided that at some stage~~

1 of the proceedings prior to conviction he or she has
2 moved for the return of property or the suppression of the
3 evidence.

4 (n) This section establishes only the procedure for
5 suppression of evidence and return of property, and does
6 not establish or alter any substantive ground for
7 suppression of evidence or return of property. Nothing
8 contained in this section shall prohibit a person from
9 making a motion, otherwise permitted by law, to return
10 property, brought on the ground that the property
11 obtained is protected by the free speech and press
12 provisions of the United States and California
13 Constitutions. Nothing in this section shall be construed
14 as altering (1) the law of standing to raise the issue of an
15 unreasonable search or seizure; (2) the law relating to the
16 status of the person conducting the search or seizure; (3)
17 the law relating to the burden of proof regarding the
18 search or seizure; (4) the law relating to the
19 reasonableness of a search or seizure regardless of any
20 warrant that may have been utilized; or (5) the
21 procedure and law relating to a motion made pursuant to
22 Section 871.5 or 995, or the procedures that may be
23 initiated after the granting or denial of such a motion.

24 (o) Within 30 days after a defendant's motion is
25 granted at a special hearing in the superior court in a
26 felony case, the people may file a petition for writ of
27 mandate or prohibition in the court of appeal, seeking
28 appellate review of the ruling regarding the search or
29 seizure motion. If the trial of a criminal case is set for a
30 date that is less than 30 days from the granting of a
31 defendant's motion at a special hearing in the superior
32 court in a felony case, the people, if they have not filed
33 such a petition and wish to preserve their right to file a
34 petition, shall file in the superior court on or before the
35 trial date or within 10 days after the special hearing,
36 whichever occurs last, a notice of intention to file a
37 petition and shall serve a copy of the notice upon the
38 defendant.

39 (p) If a defendant's motion to return property or
40 suppress evidence in a felony matter has been granted

~~1 twice, the people may not file a new complaint or seek an
2 indictment in order to relitigate the motion or relitigate
3 the matter de novo at a special hearing in the superior
4 court as otherwise provided by subdivision (j), unless the
5 people discover additional evidence relating to the
6 motion that was not reasonably discoverable at the time
7 of the second suppression hearing. Relitigation of the
8 motion shall be heard by the same judge who granted the
9 motion at the first hearing if the judge is available.~~

~~10 (q) Neither the investigating officer nor the
11 investigator for the defendant shall be excluded from the
12 hearing on a motion under this section.~~

~~13 (r) The amendments to this section enacted in the
14 1997 portion of the 1997-98 Regular Session of the
15 Legislature shall apply to all criminal proceedings
16 conducted on or after January 1, 1998.~~

SEC. 3. Section 23612 of the Vehicle Code is amended to read:

23612. (a) (1) (A) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23140, 23152, or 23153.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory

1 imprisonment if the person is convicted of a violation of
2 Section 23152 or 23153, and (i) the suspension of the
3 person's privilege to operate a motor vehicle for a period
4 of one year, (ii) the revocation of the person's privilege
5 to operate a motor vehicle for a period of two years if the
6 refusal occurs within seven years of a separate violation
7 of Section 23103 as specified in Section 23103.5, or of
8 Section 23140, 23152, or 23153, or of Section 191.5 or
9 paragraph (3) of subdivision (c) of Section 192 of the
10 Penal Code that resulted in a conviction, or if the person's
11 privilege to operate a motor vehicle has been suspended
12 or revoked pursuant to Section 13353, 13353.1, or 13353.2
13 for an offense that occurred on a separate occasion, or
14 (iii) the revocation of the person's privilege to operate a
15 motor vehicle for a period of three years if the refusal
16 occurs within seven years of two or more separate
17 violations of Section 23103 as specified in Section 23103.5,
18 or of Section 23140, 23152, or 23153, or of Section 191.5 or
19 paragraph (3) of subdivision (c) of Section 192 of the
20 Penal Code, or any combination thereof, that resulted in
21 convictions, or if the person's privilege to operate a motor
22 vehicle has been suspended or revoked two or more times
23 pursuant to Section 13353, 13353.1, or 13353.2 for offenses
24 that occurred on separate occasions, or if there is any
25 combination of those convictions or administrative
26 suspensions or revocations.

27 (2) (A) If the person is lawfully arrested for driving
28 under the influence of an alcoholic beverage, the person
29 has the choice of whether the test shall be of his or her
30 blood or breath and the officer shall advise the person that
31 he or she has that choice. If the person arrested either is
32 incapable, or states that he or she is incapable, of
33 completing the chosen test, the person shall submit to the
34 remaining test. If a blood or breath test, or both, are
35 unavailable, then paragraph (2) of subdivision (d)
36 applies.

37 (B) If the person is lawfully arrested for driving under
38 the influence of any drug or the combined influence of an
39 alcoholic beverage and any drug, the person has the
40 choice of whether the test shall be of his or her blood,

1 breath, or urine, and the officer shall advise the person
2 that he or she has that choice.

3 (C) A person who chooses to submit to a breath test
4 may also be requested to submit to a blood or urine test
5 if the officer has reasonable cause to believe that the
6 person was driving under the influence of any drug or the
7 combined influence of an alcoholic beverage and any
8 drug and if the officer has a clear indication that a blood
9 or urine test will reveal evidence of the person being
10 under the influence. The officer shall state in his or her
11 report the facts upon which that belief and that clear
12 indication are based. The person has the choice of
13 submitting to and completing a blood or urine test, and
14 the officer shall advise the person that he or she is
15 required to submit to an additional test and that he or she
16 may choose a test of either blood or urine. If the person
17 arrested either is incapable, or states that he or she is
18 incapable, of completing either chosen test, the person
19 shall submit to and complete the other remaining test.

20 (3) If the person is lawfully arrested for an offense
21 allegedly committed in violation of Section 23140, 23152,
22 or 23153, and, because of the need for medical treatment,
23 the person is first transported to a medical facility where
24 it is not feasible to administer a particular test of, or to
25 obtain a particular sample of, the person's blood, breath,
26 or urine, the person has the choice of those tests that are
27 available at the facility to which that person has been
28 transported. In that case, the officer shall advise the
29 person of those tests that are available at the medical
30 facility and that the person's choice is limited to those
31 tests that are available.

32 (4) The officer shall also advise the person that he or
33 she does not have the right to have an attorney present
34 before stating whether he or she will submit to a test or
35 tests, before deciding which test or tests to take, or during
36 administration of the test or tests chosen, and that, in the
37 event of refusal to submit to a test or tests, the refusal may
38 be used against him or her in a court of law.

39 (5) Any person who is unconscious or otherwise in a
40 condition rendering him or her incapable of refusal is



1 deemed not to have withdrawn his or her consent and a
2 test or tests may be administered whether or not the
3 person is told that his or her failure to submit to, or the
4 noncompletion of, the test or tests will result in the
5 suspension or revocation of his or her privilege to operate
6 a motor vehicle. Any person who is dead is deemed not
7 to have withdrawn his or her consent and a test or tests
8 may be administered at the direction of a peace officer.

9 (b) Any person who is afflicted with hemophilia is
10 exempt from the blood test required by this section.

11 (c) Any person who is afflicted with a heart condition
12 and is using an anticoagulant under the direction of a
13 licensed physician and surgeon is exempt from the blood
14 test required by this section.

15 (d) (1) A person lawfully arrested for any offense
16 allegedly committed while the person was driving a
17 motor vehicle in violation of Section 23140, 23152, or 23153
18 may request the arresting officer to have a chemical test
19 made of the arrested person's blood or breath for the
20 purpose of determining the alcoholic content of that
21 person's blood, and, if so requested, the arresting officer
22 shall have the test performed.

23 (2) If a blood or breath test is not available under
24 subparagraph (A) of paragraph (1) of subdivision (a), or
25 under subparagraph (A) of paragraph (2) of subdivision
26 (a), or under paragraph (1) of this subdivision, the person
27 shall submit to the remaining test in order to determine
28 the percent, by weight, of alcohol in the person's blood.
29 If both the blood and breath tests are unavailable, the
30 person shall be deemed to have given his or her consent
31 to chemical testing of his or her urine and shall submit to
32 a urine test.

33 (e) If the person, who has been arrested for a violation
34 of Section 23140, 23152, or 23153, refuses or fails to
35 complete a chemical test or tests, or requests that a blood
36 or urine test be taken, the peace officer, acting on behalf
37 of the department, shall serve the notice of the order of
38 suspension or revocation of the person's privilege to
39 operate a motor vehicle personally on the arrested

1 person. The notice shall be on a form provided by the
2 department.

3 (f) If the peace officer serves the notice of the order
4 of suspension or revocation of the person's privilege to
5 operate a motor vehicle, the peace officer shall take
6 possession of any driver's license issued by this state which
7 is held by the person. The temporary driver's license shall
8 be an endorsement on the notice of the order of
9 suspension and shall be valid for 30 days from the date of
10 arrest.

11 (g) (1) The peace officer shall immediately forward
12 a copy of the completed notice of suspension or
13 revocation form and any driver's license taken into
14 possession under subdivision (f), with the report required
15 by Section 13380, to the department. If the person
16 submitted to a blood or urine test, the peace officer shall
17 forward the results immediately to the appropriate
18 forensic laboratory. The forensic laboratory shall forward
19 the results of the chemical tests to the department within
20 15 calendar days of the date of the arrest.

21 (2) (A) Notwithstanding any other provision of law,
22 any document containing data prepared and maintained
23 in the governmental forensic laboratory computerized
24 data base system that is electronically transmitted or
25 retrieved through public or private computer networks
26 to or by the department is the best available evidence of
27 the chemical test results in all administrative proceedings
28 conducted by the department. In order to be admissible
29 as evidence in administrative proceedings, a document
30 described in this subparagraph shall bear a certification
31 by the employee of the department who retrieved the
32 document certifying that the information was received or
33 retrieved directly from the computerized data base
34 system of a governmental forensic laboratory and that the
35 document accurately reflects the data received or
36 retrieved.

37 (B) Notwithstanding any other provision of law, the
38 failure of an employee of the department to certify under
39 subparagraph (A) is not a public offense.

(h) A preliminary alcohol screening test that indicates the presence or concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140, 23152, or 23153 is a field sobriety test and may be used by an officer as a further investigative tool.

(i) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

SEC. 4. Any section of any act enacted by the Legislature during the 2000 calendar year that takes effect on or before January 1, 2001, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2000 calendar year and takes effect on or before January 1, 2001, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.